Office Supreme Court, U.S.
FILED
MAY 4 1964
JOHN F. DAVIS, CLERK

No. 1064

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

JOHN J. LANIGAN, CLIFFORD REES, JACK P. BRUCE, JAMES M. MURPHY, RICHARD E. LYNN, STANLEY F. HLADY, and MARK E. CASEY,

Petitioners,

vs.

LOCAL UNION NO. 9, OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Respondent,

JACK D. BRUCE, STANLEY F. HLADY, MARK CASEY, CLIFFORD REES and JAMES M. MURPHY, on behalf of Themselves and all others similarly situated,

Petitioners,

vs.

ROBERT FITZGERALD, JAMES A. McCANN, HOWARD CHRISTIANSEN, EMMETT J. NELSON, CLIFFORD COLLINS, STEPHEN CLANCY, JACK ELLIOTT and GEORGE GIBBS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

CLIFFORD REES, ET AL.
By
RONALD L. COHEN,
134 North LaSalle Street,
Chicago, Illinois,
Attorney for Petitioners.

The Scheffer Press, Inc.—ANdover 3-6850

INDEX

	PAGE
Petition for Writ of Certiorari	
Opinions Below	2
Jurisdiction	2
Question Presented	2
Statement	3
Reasons for Granting the Writ	5
Conclusion	11
Appendix	
Opinion of U. S. Court of Appeals	1a
Judgment Order of U. S. Court of Appeals	8a
Legislative History of the Act	9a

Authorities Cited.

Cases.

Ex Parte Benz, 177 U.S. 378	7
Johnson v. Hoy, 227 U.S. 245	7
Lanigan, et al. v. Local Union No. 9, et al, 327 F. 2d 627	5
McNally v. Hill, 293 U.S. 131	7
Parker v. Ellis, 362 U.S. 574	7, 9
Patterson v. International, 323 F. 2d 368	8, 9
Tornello v. Hudspeth, 318 U.S. 792	7
U. S. v. St. Pierre, 319 U.S. 41	7, 8, 9
U. S. v. W. T. Grant Co., 345 U.S. 629	10
Walling v. Hellmerich & Payne, 323 U.S. 37	10
Zimmerman v. Walker, 219 U.S. 744	7

PAGE

STATUTES.

28 U.S.C. § 1254(1) 2
29 U.S.C. § 411(A)(5) 2
101(A)(5) 2, 3
28 U.S.C. § 2241(C)(1) 7
U. S. Constitution, Art. III, § 2 9

MISCELLANEOUS.

37 Harvard L. R. 1002-1006 9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

No.

JOHN J. LANIGAN, CLIFFORD REES, JACK P. BRUCE, JAMES M. MURPHY, RICHARD E. LYNN, STANLEY F. HLADY, and MARK E. CASEY,

Petitioners,

vs.

LOCAL UNION NO. 9 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Respondent.

JACK D. BRUCE, STANLEY F. HLADY, MARK CASEY, CLIFFORD REES and JAMES M. MURPHY, on behalf of Themselves and all others similarly situated,

Petitioners,

vs.

ROBERT FITZGERALD, JAMES A. McCANN, HOWARD CHRISTIANSEN, EMMETT J. NELSON, CLIFFORD COLLINS, STEPHEN CLANCY, JACK ELLIOTT and GEORGE GIBBS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioners, John Lanigan, Clifford Rees, Jack Bruce, Mark Casey, James Murphy, Stanley Hlady and Richard Lynn, respectfully pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this case on the 5th day of February, 1964.

OPINIONS BELOW.

The opinion and judgment order of the District Court for the Northern District of Illinois is not reported but is reproduced in the Defendants-Appellants' Appendix in the U. S. Court of Appeals at pages 514-536. The opinion of the Court of Appeals is reported at 327 F. 2d 627 and is is set forth herein as Appendix A, at pp. 1a-6a.

JURISDICTION.

The judgment of the Court of Appeals reversing the judgment of the District Court was entered February 5, 1964. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED.

Can a labor union acting through its incumbent officers illegally conduct an "unfair trial" within the meaning and proscription of Sec. 411(a)(5) of Title 29, Sec. 101(a)(5) of The Labor Management Reporting and Disclosure Act of 1959 (hereinafter referred to as the Act), and pursuant thereto, sentence those so tried to be suspended from membership in the union and thereby preclude them from, among other things, running in a scheduled election for union offices, and then with impunity avoid the consequences of such conduct by contending and showing that at the time of trial in the District Court the suspension of sentences had been served? Does or should the fact that the imposed suspension was served prior to the

case being reached for trial in the District Court deprive the courts of jurisdiction specifically granted by an Act of Congress—and in so doing for all practical purposes nullify the meaning and intention of the Act?

STATEMENT.

Petitioners at a time (February, 1960) they were actively campaigning for election to union offices and immediately prior to the union's scheduled June 25, 1960, elections, were charged by certain of the incumbent officers, who themselves were seeking reelection, with grimacing and making faces at the union president and business manager, and causing or attempting to cause internal disturbances within the union. Internal union trials were conducted in March of 1960 which resulted in the petitioners, during the months of April and May of 1960, being found guilty of the above charges and suspended from membership in the union for various periods—*i.e.*, one to three years. Their suspensions precluded the petitioners from running as planned against the incumbent officers for union offices. Their right to vote and more generally to take part in union activities was also deprived them.

Petitioners immediately instituted internal appellate procedure—for that matter, due to the imminence of the election an attempt was made to obtain "emergency" review. When their attempt to obtain immediate emergency review was denied and it became apparent that the internal appeal procedure would not or could not give them the immediate relief they sought and deemed necessary, they instituted the instant suit in the Federal courts pursuant to Section 101 of the Act. The instant suits generally alleged that the petitioners' union trials were "unfair" within the meaning of subsection (a)(5) of the Act and prayed that their convictions and resulting suspensions be found void and set aside.

Due to the imminence of the scheduled election the District Court suit included a prayer for a preliminary restraining order against the scheduled June elections. At the hearing conducted the day prior to the date set for the elections the District Court Judge denied the motion for the temporary restraining order; however, he acknowledged that the complaint properly alleged jurisdiction and retained the complaint absent the prayer for the temporary restraining order and immediate injunctive relief.

These cases were tried in October of 1962 at which time the petitioners' suspension periods had been served (the internal appeals did result in a commutation of the sentence time) and the petitioners' internal appeals had been fully exhausted. After hearing a week of evidence and accepting beliefs the trial judge found for the petitioners, holding that their union trials, as alleged, were illegal. He ordered the union to promulgate by letter to its membership and to the internal appellate bodies that considered the cases, his findings. He also ordered that a copy of his decision be filed with the official records of the union and that the union reimburse the petitioners for the $1300.00 they necessarily expended for transcripts in their union trials.

The Court of Appeals reversed. This reversal was premised solely upon the Court's conclusion that at the time the causes were tried they were moot and should have been dismissed. The Court of Appeals held that in as much as at the time of trial (page 628) ". . . all rights, privileges, and benefits enjoyed by members of the local union had been restored to plaintiffs . . ." The cause was moot when finally reached for trial in the District Court. The Court of Appeals further stated at page 629 that at the time of trial: "There was nothing to enjoin."

REASONS FOR GRANTING THE WRIT.

I.

WITHOUT FINDING THE DISTRICT COURT'S FINDINGS OF FACT TO HAVE BEEN CLEARLY ERRONEOUS THE COURT OF APPEALS IN EFFECT FOUND THE FACTS MATERIALLY DIFFERENT FROM THOSE OF THE DISTRICT COURT.

The lower court held that the instant actions were moot by the time they reached trial. Such a conclusion is either predicated on a misunderstanding of the nature of these actions and the relief sought or upon an erroneous interpretation of the law: more specifically what constitutes mootness. Although a clear cut distinction between the lower court's factual as distinguished from legal determination is not entirely possible, for the sake of clarity we will attempt to consider each separately.

We submit to this Court that the apparent factual premise of the lower court's mootness conclusion was contrary to the factual findings in the District Court. The lower court's observation that: "By the time the cases were tried in the district court in October, 1962, all rights, privileges, and benefits enjoyed by members of the local union had been restored to plaintiffs," which apparently served as a basis for the court's legal mootness conclusion is not and could not be supported by the evidence presented to the District Court judge or the findings he made in light of such evidence.

Although, admittedly, petitioners were at the time of their District Court trial "restored" to union membership, the very rights their complaint alleged were deprived them, *i.e.*, to actively campaign and run as candidates in

the union's June, 1960 election, to vote in said election, to enjoy the camaraderie of their fellow union members and participate in other sundry incidents of union membership. And to retain their theretofore unblemished union records, —were not, indeed to a great extent practically could not, have been "restored" to them.

It would appear that the lower court lost sight of the relief requested by the pleadings, *i.e.*, to have the conviction expunged from the union record, and in accordance with the wording of the Act such other "appropriate" relief the trial judge deemed meet.

We submit that the lower court's statement (page 629): "There was nothing to enjoin," demonstrates an unfamiliarity either with the district court's judgment or the legal meaning of the term enjoin. The judgment, among other things ordered the defendant union to do certain affirmative acts, *i.e.*, notify the membership and the union's higher echelon organizations of the court's ruling, to expunge the conviction from the union records and in accordance therewith cause a copy of the decision to be filed with said related union records. This was injunctive relief, albeit mandatory, as distinguished from prohibiting, but nonetheless enjoining in nature. For that matter with the exception of that portion of the relief prayer which addressed itself to the scheduled election, (the district court denied this request for a preliminary restraining order), all of the relief sought with the exception of possible monetary reimbursement and damages was for mandatory injunctions.

II.

EVEN ACCEPTING, ARGUENDO, THE COURT OF APPEALS FACTUAL FINDINGS THEY DO NOT RENDER THE INSTANT CAUSES MOOT.

The lower court's legal conclusion that the instant cases were moot at the time they were tried in the district court is not substantiated in the law. The two Supreme Court cases (*U. S.* v. *St. Pierre*, 319 US 41 and *Parker* v. *Ellis*, 362 US 574) cited at pp. 629 by the lower court, although for the most part analogous to each other, are not analogous to the instant cases.

Both *St. Pierre* and *Parker* were concerned with writ of habeas corpus applications; both had before them petitioners whose sentences had already been served; both rested their judgments on the statutory requirements upon which the actions were predicated—*i.e.*, Section 2241, subsection (c)(1) of Title 28, U.S.C., which conditions the granting of the writ to petitioners who are "in custody" or "admitted for trial". Admittedly, the reasoning in *St. Pierre* is somewhat ambiguous, however, not so *Parker*. With a flourish of citations the majority opinion in *Parker* makes crystal clear the reasoning behind its decision. pp. 575-6

> The purpose of the proceeding defined by the statute (authorizing the writ of habeas corpus to be issued) was to inquire into the legality of the detention, and the only judicial relief authorized was the discharge of the prisoner or his admission to bail." *McNally* v. *Hill*, 293 U.S. 131, 136. "Without restraint of liberty, the writ will not issue." Id., 138. See also *Johnson* v. *Hoy*, 227 U.S. 245. "It is well settled that this court will not proceed to adjudication where there is no subject-matter on which the judgment of the court can operate." *Ex parte Baez*, 177 U.S. 378, 390. We have applied these principles to deny the writ

of certiorari for mootness on the express ground that petitioner was no longer in respondent's custody in at least three cases not relevantly different from the present one. *Weber* v. *Squier*, 315 U.S. 810; *Tarnello* v. *Hudspeth*, 318 U.S. 792; *Zimmerman* v. *Walker*, 219 U.S. 744.

Moreover, as the Court acknowledged, what was done was to dismiss for want of jurisdiction and not *mootness* per se. This fact is adequately set forth in the opinion at p. 576: "These cases demonstrate that it is a condition upon this Court's jurisdiction to adjudicate an application for habeas corpus that the petitioner be in custody when that jurisdiction can become effective." One sentence later the Court concludes that the case ". . . is dismissed for want of jurisdiction". And again in a dissent filed by the Chief Justice, at p. 582: "Consequently, the Court does not express any view on the mootness question considered *de novo*." Also, at p. 591 of the dissent the crux of the majority decision is appropriately summarized as being ". . . based on the theory that nothing can be done for *Parker* because of the nature of the relief authorized by the habeas corpus statute . . .".

The instant actions, as were the actions in *St. Pierre* and *Parker*, were brought pursuant to a specific statute. However, quite unlike the habeas corpus statute Section 101 of the Act in no way qualifies federal court jurisdiction over otherwise properly instituted cases upon the circumstance of "being suspended" from union membership. For that matter the Act's use of the terms "otherwise discipline" and any "appropriate relief" would sufficiently preclude any such jurisdiction-mootness contention.

Emphasis is given, by the lower court, to the decision of the Tenth Circuit in *Patterson* v. *International*, 323

F.2d 368. Assuming the correctness of the *Patterson* decision that case is quite distinguishable on the facts from the instant cases. Patterson in no way involved union elections or the right to vote therein; it did not deal with the right to nominate candidates or to run against incumbent officers in a union election.

For the reasons detailed above we submit that the lower court's conclusion that—"The instant cases are analogous to *U. S. v. St. Pierre* 319 U.S. 41 and *Parker v. Ellis*, 362 U.S. 574 (p. 630-1)—was and is in error. So also the subsequent reference to the "opposite" *Patterson* case.

Aside from the cases cited by the lower court, this Court has on many occasions spoken on what is and what is not a case or controversy under Art. III, Section 2 of the Constitution. We respectfully represent that the instant cases, in no way satisfy—or for that matter even approach the mootness requirements delineated by this Court. These cases are not abstract, are not academic, are not based upon hypothetical facts and do not request an advisory opinion. Their determination can and will affect the rights of the litigants—witness the appellate pursuits and concern of both sides. There will be a definite legal detriment to the loser. These cases satisfy the "impact of actuality" requirement suggested by Justice Frankfurter in "A Note on Advisory Opinions" 37 Harv. L.R. 1002, 1006. Petitioners further suggest to the Court that they have a substantial interest in the outcome of this litigation.

And more directly related to this case it is now well settled that a voluntary discontinuance of an alleged illegal situation does not operate to remove a case from

the power of the judiciary. *U.S.* v. *W. T. Grant Co.*, 345 U.S. 629 and *Walling* v. *Hellmerich & Payne*, 323 U.S. 37.

In its decision the lower court appears to be overly concerned with the fact that a judgment in favor of the petitioners could not and would not restore exactly that which was deprived to them, *i.e.*, their right to the status of union membership and the normal incidents thereto. Such a concern is patently unwarranted. Surely one who traumatically has a member of his body removed and causes suit to be filed thereon would not have a claim rendered moot by the inability of the courts to restore the member in kind.

III.

THE DECISION OF THE LOWER COURT IF LEFT STAND WILL SERVE TO DEPRIVE DEMOCRACY AND INSURE DICTATORSHIPS TO AND IN LABOR UNIONS—CONTRARY TO THE INTENTION OF CONGRESS SET FORTH IN THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT.

Aside from, and without reference to what petitioners feel to be misapplied factual determinations and erroneous legal conclusions by the lower court, still another more obvious and apparent reason exists for the granting of the instant petition. Petitioners submit to this Court that left stand the Court of Appeals decision in the instant cases will all but attenuate and render useless the Act's Bill of Rights provisions. The overriding purpose and intention behind the Act as a whole, *i.e.*, to restore democracy to unions and by so doing reduce incidents of corruption and mismanagement without the necessity of additional supervisory legislation—would be frustrated to the extent of reducing the Act to a mere declaration of purpose and intent—nothing more. (See Appendix "C"—Legislative History of Act).

To explain. All any unscrupulous union officers who presently enjoy the advantage of such offices need do to guarantee their continued perpetuation in office is follow the course of action initiated by the present defendants—the course of action condoned by the lower court's decision. When those possessed of such proclivity observe their "reigns" in office being challenged by other members seeking to unseat them, they need only wait until they have ascertained the identity of their opposition and that the election is immediately forthcoming. Then, by virtue of their offices, they cause charges—any charges—to be brought against said opponents. They, again by virtue of their offices, determine the time of trial—who the judges are to be—how the trials are to be conducted, and eventually what sentences are to be imposed. Of necessity such a sentence must include a "suspension period" which carries past the scheduled election date. Having thus eliminated their opposition they can cause their own unopposed reelection. Should their now vanquished opponents have the fortitude and the funds to challenge their trials in the federal courts, then, at any time prior to trial, (but subsequent to the election) they need only reduce the suspension period, if it has not already run, and plead the "mootness" decision of the Seventh Circuit Court of Appeals in the instant case.

With little emendation the above facts and the attendant result in the hypothetical situation set out above is what occurred to the petitioners—even more appropriately what the District Court judge found to have occurred.

CONCLUSION

Federal courts not only have the power but an obligation to give meaning and effect to the statutes and laws of Congress. Let stand the lower court's decision will all but reduce to mere verbiage the Bill of Rights provisions of the Labor Management Reporting and Disclosure Act—the provisions that were both the main cause and purpose behind the Act. The Act intended to vest in union members some of the rights and privileges possessed by those in truly democratic societies or organizations. The lower court decision condones and gives judicial approbation to the "star chamber" methods used by the defendant union, methods principled upon the incumbent officers' desires to perpetuate themselves in office with impunity, notwithstanding illegally eliminating their only opposition in contravention of the Act.

The facts in the instant case—facts found to exist and severely criticized by the trial judge—clearly portray a foul situation; one that cannot and should not be tolerated.

The lower court's "mootness" conclusion is neither based on the law or the facts and as such must be overruled lest it set a precedent not only in this type of case but in any case.

We respectfully request, therefore, that for the reasons outlined, a writ of certiorari be granted by this Court to review the judgment of the court below and, in due course, to reverse it.

Respectfully submitted,

CLIFFORD REES, ET AL.

by

RONALD L. COHEN

Attorney for Petitioners

APPENDIX A

In the
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Nos. 14139 and 14140 SEPTEMBER TERM AND SESSION, 1963

JOHN J. LANIGAN, CLIFFORD REES, JACK D. BRUCE, JAMES M. MURPHY, RICHARD E. LYNN, STANLEY F. HLADY, AND MARK E. CASEY,
Plaintiffs-Appellees,
v.
LOCAL UNION NO. 9 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
Defendant-Appellant.

JACK D. BRUCE, STANLEY F. HLADY, MARK CASEY, CLIFFORD REES AND JAMES M. MURPHY,
Plaintiffs-Appellees,
v.
ROBERT FITZGERALD, JAMES A. McCANN, HOWARD CHRISTIANSEN, EMMETT J. NELSON, CLIFFORD COLLINS, STEPHEN CLANCY, JACK ELLIOTT AND GEORGE GIBBS,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

February 5, 1964

Before SCHNACKENBERG, KNOCH, and SWYGERT, *Circuit Judges.*

SWYGERT, *Circuit Judge.* Two actions involving Section 101(a), subsections (4) and (5), of the Labor-Management

Reporting and Disclosure Act of 1959, (Landrum-Griffin Act), 73 Stat. 522, 29 U. S. C. § 411 (a) (4) (5) (Supp. IV, 1962); were consolidated for trial by the district court. This appeal is from a judgment for plaintiffs.

In the first action seven members of Local Union No. 9 (Chicago) of the International Brotherhood of Electrical Workers, AFL-CIO, sought to enjoin the local union from enforcing certain penalties imposed upon them following internal union trials wherein they were charged with creating dissension among and slandering fellow union members. In the second action five of the original plaintiffs sought the same relief against the officers and the trial board of the local union.

A résumé of the procedural aspects of the union trials follows. Plaintiffs were charged with two offenses which are defined in the International constitution as follows:

> (8) 'Creating or attempting to create dissatisfaction or dissension among any of the members or among L. U.'s of the I. B. E. W.
>
> (10) Slandering or otherwise wronging a member of the I. B. E. W. by any wilful act or acts.

On various dates in April and May, 1960, each plaintiff was found guilty by the local union's trial board of violating these provisions.

The constitution provided that the executive board of the local union should constitute the trial board. Before the union trials began plaintiffs asked that the composition of the trial board be changed. They invoked a provision of the constitution that "no [executive] board member shall sit in a case which affects his own employer, or which involves a member working for the same employer." In such circumstance the constitution provides that the executive board member shall be disqualified and the president of the local union shall appoint a substitute to fill the vacancy occurring on the trial board.

Pursuant to this constitutional directive, the president of Local Union No. 9 appointed substitutes to fill four

vacancies on the board. At no time before or during the internal trials did the plaintiffs object to the composition or the method of selection of the newly constituted trial board.

The trial board, after finding the plaintiffs guilty, said that it did not "desire to create any financial hardship upon his family." Accordingly, it directed that each plaintiff be ineligible to participate in the affairs of the local union for a period of three years or one year depending upon his involvement in the proscribed conduct. The board emphasized that its action was not to be construed as interference with the right of the plaintiffs to work at their present job or at any other job within the jurisdiction of the local union or the International union.

Plaintiffs appealed the decision to the International vice president on May 25, 1960. Despite the pendency of the appeal, plaintiffs filed their first action in the district court on June 9, 1960.

On May 15, 1961, the vice president of the International union confirmed the trial board's decision. However, he reduced the penalties so that the membership rights and privileges of all the plaintiffs were restored by July 25, 1961.

Plaintiffs subsequently appealed to the International president. Plaintiffs contended that they would be prohibited from running for union office after the penalty period expired. The president held they were in error, and the only interpretation which could be given to the decision of the board as commuted by the International vice president was that plaintiffs were entitled to participate in all activities, including the running for office, after July 25, 1961.

Thereafter, on September 15, 1961, the International executive council affirmed the president's decision and the International convention affirmed on September 14, 1962.

By the time the cases were tried in the district court in October, 1962, all rights, privileges, and benefits en-

joyed by members of the local union had been restored to plaintiffs.

In the district court plaintiffs contended that the union trials were not fair as required by Section 101(a) (5) of the Landrum-Griffin Act. This section provides that no member of any labor organization may be disciplined unless he has been (1) served with written specific charges, (2) given a reasonable time to prepare his defense, and (3) afforded a full and fair hearing.

The district judge ruled that requirements one and two of the statute had been met. He found, however, that although the union trial proceedings were in accord with the International constitution, plaintiffs had not received a fair hearing because of an inherent defect in the constitution. The constitution provided that when a member of the trial board was disqualified, substitution should be made by the local union president. In the instant cases one of the charges against the plaintiffs was slandering the president of the local union. Because four of the five members of the trial board had been appointed by the president, who was allegedly interested in the outcome of the trial and who testified against plaintiffs, the district court concluded that the board was not impartial.

The judge directed that the court's judgment and memorandum decision be made a part of the files of the local union; that the local union inform its members and the officers of the International union of the court's ruling, and that the local union reimburse plaintiffs $1,300, representing costs of a transcript of the union trials made by a court reporter independently hired by plaintiffs.

Defendants moved to dismiss the actions filed in the district court for lack of jurisdiction over the subject matter because (1) plaintiffs had failed to exhaust internal administrative remedies required by Section 101(a) (4) of the Landrum-Griffin Act, (2) plaintiffs had failed to join the local union as an indispensable party, and (3) neither action was a case or controversy cognizable by the federal courts, that is, they were moot. The motion was denied.

In this appeal defendants contend that the district judge erred in denying the motion to dismiss, refusing to admit in evidence the transcript of the union trials, awarding damages, and determining that the trials were not fair.

The district judge ruled that the cases were not moot because the procedure followed in the union trials violated the Landrum-Griffin Act, and "in future trials of union members, perhaps of these same men, the same procedures may be followed." As authority, the judge cited *United States* v. *W. T. Grant Co.*, 345 U. S. 629 (1953); *Carpenters Union* v. *N. L. R. B.*, 341 U. S. 707 (1951); and *Walling* v. *Helmerich & Payne, Inc.*, 323 U. S. 37 (1944). He said:

> In those cases as in the instant cases the judgment of the court would not eliminate a present violation of plaintiff's rights: It would, however, serve to avoid repetition in the future of such illegal conduct as had occurred previously and which otherwise the defendant would be free to resume. It is true that the mere existence of a blemish on the reputation of the plaintiffs would not present a case or controversy for this court to determine. *St. Pierre* v. *United States*, 319 U. S. 41 (1943). However, more than removal of a stigma is at issue in this suit. Without a declaration by this court at this time that the procedures followed in the union trial at issue were illegal, subsequent trials may be conducted in the same fashion. No assurances have been made to the contrary. In fact the defendant union strongly urges the legality of the procedures followed. The procedures were in accordance with the provisions of the Union Constitution which are still in effect. It would appear that a declaratory of illegality is essential to avoid repetition of the offense. Thus there is at present an actual controversy and the cause cannot be said to be moot.

We believe, however, that the cases were moot at the time they were heard and should have been dismissed.

There are differences that make *Grant*, *Carpenters Union*, and *Helmerich & Payne* inapposite to the instant situa-

tion. Those cases were injunction suits seeking to enjoin specific types of conduct. The Court held that cessation of illegal conduct did not diminish the risk of future similar conduct; therefore, the cases were not moot. Here plaintiffs sought to enjoin the enforcement of the penalties imposed upon them. However, at the time the cases were heard the penalties had been served and the union rights restored. There was nothing to enjoin.

It should be noted that plaintiffs did not seek to enjoin the future enforcement of the assailed constitutional provision. Should a union member claim in the future that this provision violates the Landum-Griffin Act, he would have to institute a new suit to determine the issue.

The instant cases are analogous to *United States* v. *St. Pierre*, 319 U. S. 41 (1943), and *Parker* v. *Ellis*, 362 U. S. 574 (1960). In *St. Pierre* and *Parker* petitioners sought review of prison sentences imposed upon them. The Court held both cases were moot because the petitioners had been released from prison prior to the hearings before the Supreme Court.

Even more apposite is *Patterson* v. *International Alliance of Theatrical Employees*, ... F. 2d .... (10th Cir. 1963). In that case, a union member asked the district court to void an order of the union suspending his membership for six months because of alleged misconduct. He requested the suspension be expunged from the records of the local union and that the union be enjoined from enforcing the order. The hearing before the district court came on subsequent to the expiration of the suspension order and when the plaintiff was again enjoying full membership privileges. The district court dismissed the case as moot. Affirming, the court of appeals said:

> The order of suspension related solely to Patterson's relationship with the Union. It in nowise affected his employment, his pay, his seniority, his working conditions, or his status as an employee. At the time of the trial below, he was enjoying all the rights and privileges of a member of the Local. There was no

likelihood that any further disciplinary action would be taken in the matter which brought about his suspension.

In that posture of the case, it seems to us that the controversy was abstract or moot, rather than definite or concrete.

Our holding that the instant cases were moot and should have been dismissed makes it unnecessary to discuss the other alleged errors. We are mindful of what the Supreme Court said in *United States v. Alaska S. S. Co.*, 253 U. S. 113, 116 (1920):

> However convenient it might be to have decided the question . . . this court "is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it."

The judgment is reversed with direction to dismiss the actions.

APPENDIX B.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago 10, Illinois
Wednesday, February 5, 1964

Before

Hon. Elmer J. Schnackenberg, Circuit Judge
Hon. Wm G. Knoch, Circuit Judge
Hon. Luther M. Swygert, Circuit Judge

JOHN J. LANIGAN, et al.,
Plaintiffs-Appellees,

No. 14139 vs.

LOCAL UNION NO. 9 of the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
Defendant-Appellant;

JACK D. BRUCE, et al.,
Plaintiffs-Appellees,

No. 14140 vs.

ROBERT FITZGERALD, et al.,
Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, REVERSED, with costs, and that this cause be, and it is hereby REMANDED to the said District Court with direction to dismiss the actions, in accordance with the opinion of this Court filed this day.

APPENDIX C

ANALYSIS OF LEGISLATIVE HISTORY OF ACT.

A brief review of the legislative history of the LMRDA, more specifically the Acts' bill-of-rights provisions, aids in better understanding the Congressional intent and purpose behind the enactment of the Act. An energetic and much publicized congressional committee had promulgated to the country as a whole, and most directly to its fellow congressional members, the extent to which nefarious conduct, corruption and racketeering had infested itself in labor unions. Instances of this corruption took many forms and was, unfortunately, uncovered in many union organizations. Probably for the first time in the history of our country popular opinion turned against the union movement. Aided somewhat by this sudden change in popular opinion, and realizing the tremendously awesome power corrupt union leaders could bring to bear upon the country, Congress came to a realization that curbs had to be placed on the heretofore unbridled power of union officials. Congress realized that unions *per se*, the "rank and file" union members, were not corrupt. However, as vividly pointed out by the congressional committee, the "rank and file" union member had few if any rights within the union; moreover, it was these "rank and file" members who were most often the victims of their officers' venality. One of the most obvious remedies to stem union corruption was apparent: the individual rights of the members had to be strengthened. Democratic process had to be forced, in many instances, on heretofore dictatorial unions. Congress entertained the hope that the "rank and file" union members, aided by appropriate legislation would rid themselves of parasitical, abject union officials. By way of illustrating the importance congress placed upon the Landrum-Griffin "bill-of-rights" sections, it is noted that the Bill first introduced in this field, the Kennedy-Ervin Bill, did not contain

what was later considered to be an adequate "bill-of-rights" provision. S.1555, 86th Cong., 1st Sess. (1959). This omission prompted Senator McClellan to make the following comment on the initially submitted bill:

> ". . . It does not afford adequate sanctuary to the exploited and the oppressed. I propose, therefore, Mr. President, to offer some strong amendments—amendments that will be in the interest primarily of workers—of union members and for their protection: amendments designed to insure greater integrity in the administration and management of union affairs." 105 Cong. Rec. 6472, 86th Cong., 1st Sess. (1959).

During congressional debate subsequent to Senator McClellan's proposed amendment (This amendment was later passed by the Senate 105 Cong. Rec. 6492-6493.) the Senator further emphasized the need for a union member's "bill-of-rights" when he stated:

> "Mr. President, I do not believe that racketeering, corruption, abuse of power, and other improper practices on the part of some labor organizations can be, or will ever be, prevented until and unless the Congress of the United States has the wisdom and the courage to enact laws prescribing minimum standards of democratic process and conduct for the administration of internal union affairs." 105 Cong. Rec. 6471, 86th Cong. 1st Sess. (1959).

During debate on the present Landrum-Griffin bill, Senator Mundt stated:

> "This proposed legislation, as presently before us, goes a big step forward in restoring balance between the right of the trade union member and the right of the officer or the official who functions as the top bargaining agent of his union." 105 Cong. Rec. 1791-1, 86th. Cong., 1st Sess. (1959).

At the time it enacted the Landrum-Griffin bill, the House of Representatives was not without comment as to the motivation and intention underlying the "bill-of-rights" provisions. Representative Arends stated:

". . . it certainly behooves us to provide by law adequate protection of the individual workingman in his basic rights. We must make certain that he is fully protected in his right to be free from employer interference and his right to be free from union domination. It has been abundantly and conclusively demonstrated by the investigations and studies that have been made that he does not now have that protection. 105 Cong. Rec. 15690, 86th Cong. 1st Sess. (1959).

A comment by Representative Derwinski is most apropos to the factual situation in this case; also referring to the "bill-of-right" provision in the enacted Landrum-Griffin bill, he said:

". . . a bill-of-rights giving the rank-and-file union member full protection of his rights as a union member must be adopted. The purpose of the bill-of-rights is to protect union members against the rules and practices of some unions which effectively stifle all expression of opposition to the union bosses." 105 Cong. Rec. 15700, 86th Cong. 1st Sess. (1959).

The above comments extracted from the Congressional Record clearly crystalize the purpose and intent of the Landrum-Griffin bill-of-right provisions. These comments make it clear that prior to the enactment of the Landrum-Griffin Act, these rights were not in existence, but that by enacting these sections Congress intended to guarantee and insure democratic rights to union members.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

FILED
JOHN F. DAVIS, CLERK

NO. 1064

JOHN J. LANIGAN, CLIFFORD REES, JACK P. BRUCE, JAMES M. MURPHY, RICHARD E. LYNN, STANLEY F. HLADY, and MARK E. CASEY,

Petitioners,

vs.

LOCAL UNION NO. 9 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Respondent,

JACK D. BRUCE, STANLEY F. HLADY, MARK CASEY, CLIFFORD REES and JAMES M. MURPHY, on behalf of Themselves and all others similarly situated,

Petitioners,

vs.

ROBERT FITZGERALD, JAMES A. McCANN, HOWARD CHRISTIANSEN, EMMETT J. NELSON, CLIFFORD COLLINS, STEPHEN CLANCY, JACK ELLIOTT and GEORGE GIBBS,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

BRIEF OF RESPONDENTS IN OPPOSITION

BERNARD M. MAMET,
Suite 1326,
327 S. La Salle Street,
Chicago, Illinois 60604,
HArrison 7-7630,
Attorney for Respondents.

CHAMPLIN-SHEALY COMPANY, CHICAGO 365

INDEX

	PAGE
Question Presented	2
Statement	2
Argument	6
Conclusion	13

CITATIONS

Cases:

Beckman v. Local No. 46, International Association of Bridge, etc. Workers, 314 F. 2d 848 (C. A. 7, 1963) 7

Mamula v. Steelworkers, 304 F. 2d 198 (C. A. 3, 1962), cert. denied, 371 U. S. 823 (1962) 8

Parker v. Ellis, 362 U. S. 574 (1960) 9, 10

Patterson v. International Alliance of Theatrical Employees, 323 F. 2d 368 (C. A. 10, 1963) 10

Robins v. Rarback, 325 F. 2d 929 (C. A. 2, 1963) 7

United States v. Alaska S. S. Co., 253 U. S. 113 (1920) 12

United States v. St. Pierre, 319 U. S. 41 (1943) 9, 10

Statutes:

Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 519; Section 403, 73 Stat. 534, 29 U. S. C. 483 6, 8

United States Constitution, Article III, Section 2 6, 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 1064

JOHN J. LANIGAN, CLIFFORD REES, JACK P. BRUCE, JAMES M. MURPHY, RICHARD E. LYNN, STANLEY F. HLADY, and MARK F. CASEY,

Petitioners

vs.

LOCAL UNION NO. 9 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Respondent,

JACK D. BRUCE, STANLEY F. HLADY, MARK CASEY, CLIFFORD REES and JAMES M. MURPHY, on behalf of Themselves and all others similarly situated,

Petitioners,

vs.

ROBERT FITZGERALD, JAMES A. McCANN, HOWARD CHRISTIANSEN, EMMETT J. NELSON, CLIFFORD COLLINS, STEPHEN CLANCY, JACK ELLIOTT and GEORGE GIBBS,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

BRIEF OF RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

If at the time of trial, the discipline imposed upon Petitioners (union members) through their internal union procedures had expired in every respect, and Petitioners sought only to remove what they claimed was a "blemish" on their reputation, was there a case or controversy cognizable by a Federal Court?

STATEMENT

On various dates between April 22 and May 6, 1960 (App. 516) the Petitioners were found guilty of violating certain sections of their Union International Constitution by a Trial Board of the Local Union, convened in accordance with the requirements of such Constitution (App. 531). Petitioners Rees, Lanigan, Bruce and Murphy were charged with jumping upon the platform of the Union's meeting hall after the President of the Union had properly adjourned the meeting and using abusive and insulting language for the purpose of creating a disturbance and dissatisfaction or dissension among the members of the Union. They were also charged with slandering and otherwise wronging the President of the Union. These same Petitioners along with the other Petitioners (Casey, Hlady and Lynn) were additionally charged with attending a National Labor Relations Board hearing "not for the purpose of attempting to ascertain

1. Since Petitioners have filed with this Court copies of the appendix record used in the lower court, record citations will be to the said appendix and will be designated by the letters "App." followed by the number of the relevant page in the appendix. Petitioners have also included several appendices in their Petition, and references thereto will be designated by the letters "S. A." followed by the relevant page number.

facts or to inquire as to the nature of the proceedings, but for the express purpose of harassing, embarrassing and annoying the Business Manager of the Union while he was testifying on behalf of the Local Union pursuant to subpoena issued by the National Labor Relations Board." The charges alleged that for such purpose, while the Business Agent was testifying at the hearing on behalf of the Union, Petitioners grimaced, made faces and laughed at him in the clear view of the Hearing Officer and the others present. (Resps. Exh. 12, 18, 25, 31, 37, 43, and 49; App. 547, 562, 567, 589, 591, 601 and 602).

The Union Trial Board found the Petitioners guilty of a number of the charges but not all of them.[2] The Trial Board, however, specifically stated that it did not "desire to create any financial hardship upon his family." [S. A. 3a]. Accordingly, it directed that each Petitioner "be ineligible to participate in the affairs of the local union for a period of three years or one year depending upon his involvement in the proscribed conduct." The Trial Board "emphasized that its action was not to be construed as interference with the right of the plaintiffs to work at their present job or at any other job within the jurisdiction of the local union or the International union." (Ct. of Appeals Dec., S. A. 3a).

---

2. The Actions and Findings of the Trial Board for each of the Petitioners appear as the following exhibits on the following pages of the Appendix:

Clifford Reese	Exh. No. 11	App. 550-557
John J. Lanigan	Exh. No. 20	App. 565-572
Richard Lynn	Exh. No. 27	App. 578-584
Jack D. Bruce	Exh. No. 33	App. 589
Stanley F. Hlady	Exh. No. 39	App. 592-598
Mark E. Casey	Exh. No. 45	App. 602
James M. Murphy	Exh. No. 51	App. 603

All of the Petitioners appealed the Trial Board decisions to the International Vice President (S. A. 3 a). On May 15, 1961, the Vice President affirmed the Trial Board's decision. "However, he reduced the penalties so that the membership rights and privileges of all the plaintiffs were restored by July 25, 1961." (Ct. of Appeals Dec., S. A. 3 a; *See also*, App. 559, 572, 589, 603, 585-586, 598, 602). Petitioners thereafter appealed to the International President, contending that they would be prohibited from running for union office after the penalty period expired. The President, however, held that they were in error "and the only interpretation which could be given to the decision of the board as commuted by the International vice president was that plaintiffs were entitled to participate in all activities, including the running for office, after July 25, 1961." (Ct. of Appeals Dec. S. A. 3 a). Thus, the International President specifically found and informed Petitioners:

> "1. After July 25, 1961, all rights, privileges and benefits were to be restored to you and after said date you were privileged to exercise full rights of membership.
>
> "2. You were at all times permitted to maintain your membership.
>
> "Although you were denied certain rights and privileges, it is my interpretation of the Vice President's decision, and I hereby rule that
>
> "The action of the Trial Board and the Vice President's decision in no way denied you the right to maintain your (good standing) membership.
>
> "Therefore, if you maintained your continuous good standing and you continue to maintain your continuous good standing in the Local Union as required by the provisions of Article XVIII, Sec. 10 of the IBEW Constitution, you shall be eligible to be a candidate for Local Union office in the Local Union election scheduled for

1963." (App. 561-562. *See also*, App. 572-574, 587-588, 589, 598-601, 602, 603).

The trial herein commenced in the district court in October, 1962. By the time the cases reached trial and, in fact, since July 25, 1961, all rights, privileges, and benefits equal to the rights enjoyed by all other members were vested in Petitioners (App. 252, 286-287, 524). In fact, several of them have run for local union office.

ARGUMENT

Petitioners present nothing novel. There is no conflict among the circuits and the Court of Appeals decided the issue in accordance with prior decisions of this Court. All that was involved here was internal union trials conducted in accordance with the provisions of the International Constitution and based upon specific written charges to which Petitioners presented full and complete claimed defenses in lengthy internal hearings. Petitioners' appeals within the structure of the International Union were granted in part in that the penalty periods were reduced and all rights and privileges equal to those enjoyed by other members were restored no later than July 25, 1961. Petitioners now claim to this Court that this matter involves a situation which had precluded them from running for union office. Apart from the fact that the question of union elections was not involved in the present trial (and could not be because of the requirements of Title IV, Section 403 of the Act, 73 Stat. 534, 29 U. S. C. § 483) as the Court of Appeals noted, the president of the International Union, in reply to Petitioners' appeal, specifically informed them that "the only interpretation which could be given to the decision of the Board as communicated by the International Vice President was that plaintiffs were entitled to participate in all activities, including the running for office, after July 25, 1961" (Ct. of Appeals dec., S. A. 3 a). Clearly then, when the trial commenced in the district court in October, 1962, the matter presented no case or controversy under Article III, Section 2 of the Federal Constitution.

Petitioners nevertheless contend that despite the absence of a case or controversy before the trial court, this Court

should intercede because "the Court of Appeals decision in the instant cases will all but attenuate and render useless the Act's Bill of Rights provisions." They contend that the decision below would create a simple means by which corrupt labor officials could indefinitely retain control of unions. The method they envision is that of bringing spurious charges against opposing candidates immediately before an election, then trying and convicting them without a fair hearing. The suspension, according to the plan outlined by the Petitioners, need last only long enough until the election is held and the whole cycle can be repeated when election time rolls around again in a subsequent year.

Aside from the fact that there was no finding and no proof that any corruption was present in the instant matter (indeed Respondents' only alleged error was that they faithfully followed their International Constitution) Petitioners give too little credit to the resourcefulness of our federal court system. The federal courts have been very diligent to prevent just what Petitioners claim to fear, namely, the holding of union elections where irreparable harm would result from holding them. For example: in *Beckman* v. *Local No. 46, International Association of Bridge, etc. Workers*, 314 F. 2d 848 (C. A. 7, 1963) the instant Circuit upheld the district court's action in enjoining the counting of ballots of a local union election where the ballot box had disappeared for several hours following the election. Similarly, wherever it appeared that the harm would be irreparable by holding the election a court could presumably enjoin that election. Moreover—and most important—Title IV of the Act gives the Secretary of Labor authority to file suit in federal district court to set aside any election where members were unfairly denied the right to be candidates. It is clear then that what Petitioners are attempting to do is, after an election has been held, to convert a Title I action into a Title IV ac-

tion. Now, for the first time, they are attempting to have a reviewing court determine the propriety of a completed election, a task which Congress has relegated exclusively to the Department of Labor (See, Section 403 of the Landrum-Griffin Act, 73 Stat. 534, 29 U. S. C. § 483). In their statement of the question, Petitioners refer to an alleged attempt by internal union trial and suspension to "preclude them from, among other things, running in a scheduled election for union offices . . ." (Petition, page 2). No such issue is before the Court. The Trial Court made no such findings (App. 514-534). Moreover, Petitioners as admitted on page 4 of their Petition, originally sought a temporary restraining order enjoining the holding of the Local Union's elections scheduled for June, 1960, and the District Court denied any injunctive relief. Subsequently, the District Court sustained a motion to dismiss from the complaint those portions "which seek to set aside or invalidate the membership election of June, 1960 and to invalidate or enjoin actions taken or proposed, authority exercised or assumed, compensation paid or to be paid, and all other incidents, powers, rights and duties arising out of the said election" (App. 94-95). No appeal was taken from such dismissal. Neither at the trial nor before the Court of Appeals did Petitioners contend that an election issue was involved in this case. The trial in the District Court proceeded on the theory that all issues with respect to union elections and the nomination of candidates were removed from the case. Indeed, under the Statute already cited, and under the reported decisions, it is clear that the trial court was even without jurisdiction to consider any election question *once the election had been held*. *Robins* v. *Barback*, 325 F. 2d 929 (C. A. 2, 1963); *Mamula* v. *Steelworkers*, 304 F. 2d 108 (C. A. 3, 1962), *cert. denied*, 371 U. S. 823 (1962). If there had been any impropriety practiced with respect to any union election

clearly the Petitioners had a remedy available to them through the Department of Labor.

The only issue before this Court is whether the instant cases were moot at the time of trial. We submit that the Court of Appeals was correct in holding that they were. As the Court stated, "By the time the cases were tried in the district court in October, 1962, all rights, privileges, and benefits enjoyed by members of the local union had been restored to plaintiffs." (S. A. 3a-4a). The trial court itself found that at the time of the trial Petitioners were "members of the union in good standing with all the rights of other members." (App. 524). Petitioners nevertheless maintain that these cases are not moot because the internal union trials marred their "theretofore unblemished union records" and that it is proper for a federal court to take jurisdiction of the cases "to have the conviction expunged from the union record." (Petition, pages 5-6). Actually, as we have noted, it is not true that there is presently any blemish on the records of Petitioners. They are free to vote, run for office and have all of the other privileges of members in good standing. But, irrespective of any other considerations, as the Court of Appeals noted, in the analogous cases of *United States* v. *St. Pierre*, 319 U. S. 41 (1943) and *Parker* v. *Ellis*, 362 U. S. 574 (1960), where petitioners sought review of prison sentences imposed upon them, this Court held that both cases were moot because the petitioners had been released from prison before the Supreme Court had an opportunity to rule on the petitions (Ct. of Appeals Dec. S. A. 6 a). Even the instant trial court found that the grounds now invoked by Petitioners in an effort to obtain certiorari are insufficient to vest jurisdiction in a federal court: "[T]he mere existence of a blemish on the reputation of the plaintiffs would not present a case or controversy for

this court to determine. *St. Pierre v. U. S.*, 319 U. S. 41 (1943)" (App. 526). Petitioners, clearly troubled by the *St. Pierre* and *Parker* cases attempt to distinguish them and state: "Both *St. Pierre* and *Parker* were concerned with writ of habeas corpus applications . . . both rested their judgments on the statutory requirements upon which the actions were predicated—*i.e.*, Section 2241, subsection (c) (1) of Title 28, U. S. C. . . ." In reply, all one can say is that it just is not so. In their anxiety Petitioners have misread *St. Pierre*. *St. Pierre* was not concerned with a writ of habeas corpus application. Nor, was the judgment of this Court in that case grounded on the statutory requirements of 28 U. S. C. Section 2241. *St. Pierre*, as the first line in the official Reports states, was before the Court on a writ of certiorari "to review the affirmance (132 F. 2d 537) of a sentence to imprisonment for contempt of court." The decision was, however, decided not on statutory but on constitutional grounds, the Court holding that "A federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it." The court specifically held, "The moral stigma of a judgment which no longer affects legal rights does not present a case or controversy for appellate review." See also, concurring opinion of Justices Harlan and Clark in *Parker v. Ellis*, 362 U. S. 574, where, citing the *St. Pierre* case, the justices noted that Article III, Section 2 of the Constitution requires a "case or controversy" for a federal court to assume jurisdiction.

The Court of Appeals relied also on the Tenth Circuit's decision in *Patterson v. International Alliance of Theatrical Employees*, 323 F. 2d 368 (1963), which is the only other Court of Appeals decision to consider the precise question at issue here in an internal union trial context. In that case, a union member asked the District Court to void an order of

the union suspending his membership for six months because of alleged misconduct. He requested the suspension be expunged from the records of the local union and that the union be enjoined from enforcing the order. The hearing was held before the district court subsequent to the expiration of the suspension order and when the Plaintiff was again enjoying full membership privileges. The district court dismissed the case as moot. Affirming the court of appeals stated:

> "The order of suspension related solely to Patterson's relationship with the Union. It in nowise affected his employment, his pay, his seniority, his working conditions, or his status as an employee. At the time of the trial below, he was enjoying all the rights and privileges of a member of the Local. There was no likelihood that any further disciplinary action would be taken in the matter which brought about his suspension.
>
> "In that posture of the case, it seems to us that the controversy was abstract or moot, rather than definite or concrete."

That precisely is the situation with the Petitioners in the instant case. The suspension in nowise affected their employment, their pay, their seniority, their working conditions, or their status as employees. At the time of the trial all were enjoying all of the rights and privileges of other members of the Local. Furthermore there was no showing of any likelihood of any further disciplinary action. Indeed several of the Petitioners have since run for major offices in local union elections. Petitioners nevertheless assert in general terms that the instant cases are not moot because they "are not abstract, are not academic, are not based upon hypothetical facts and do not request an advisory opinion." (Petition, page 9). Actually, what the District Court did was precisely to issue an advisory opinion. Thus the Dis-

trict Court openly stated that although there was no specific relief with respect to their union status that it could offer Petitioners, nevertheless "(i)n future trials of union members, perhaps of these same men, the same union procedures may be followed" (App. 524). The trial court specifically found that its "judgment . . . would not eliminate a present violation of the plaintiffs' rights" (App. 526). It said that: "It would, however, serve to avoid repetition in the future of such illegal conduct as had occurred previously and which otherwise the defendant would be free to resume. Without a declaration by this court at this time that the (International Constitution) procedures followed in the Union trial at issue were illegal, subsequent trials may be conducted in the same fashion. . . . It would appear that a declaration of illegality is essential to avoid repetition of the offense." (App. 526-527).

We find it difficult to conceive of a more obvious example of an advisory opinion. In refusing to accept the District Court's rationale, the Court of Appeals correctly pointed out:

> "It should be noted that plaintiffs did not seek to enjoin the future enforcement of the assailed constitutional provision. Should a union member claim in the future that this provision violates the Landrum-Griffin Act, he would have to institute a new suit to determine the issue." (Ct. of Appeals Dec., S. A. 6a).

As the Court of Appeals stated (S. A. 7a), "We are mindful of what the Supreme Court said in *United States v. Alaska S. S. Co.*, 253 U. S. 113, 116 (1920):

> "However convenient it might be to have decided the question . . . this court is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law

which cannot affect the result as to the thing in issue in the case before it.'"

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari be denied.

Respectfully submitted,

BERNARD M. MAMET,
Suite 1326,
327 S. La Salle Street,
Chicago, Illinois 60604,
HArrison 7-7630,

Attorney for Respondents.

May 28, 1964

3. With respect to Petitioners' contention that the instant cases satisfy the "impact of actuality" standard suggested by Justice (then Professor) Felix Frankfurter in "A Note on Advisory Opinions", 37 Harv. L.R. 1002, 1006, the short answer is that Justice Frankfurter himself was one of the Justices of the Court when, by *per curiam* opinion, it decided the *St. Pierre* case.